IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.4027 OF 1990

Shri Srikant Baburao Awthade Petitioner

Vs.

The General Manager,
National Cooperative Development
Corporation, 4, Siri Institutional
Area, Houz Khas, New Delhi 16. Respondent

CORAM: B.H.MARLAPALLE,J.
June 16, 2005.

ORAL JUDGMENT:

1. This petition was dismissed for non-prosecution on 25-7-1991 and it came to be restored a year later and rule was granted on 18-11-1992. It came up for final hearing on 9-6-2005 as well as on 10-6-2005 and none was present for the petitioner-employee. Today when it is taken up for final hearing none appears for the petitioner. It would be, therefore, expedient to proceed to decide the petition on merits, though ex-parte.

2. The petitioner had approached the Labour Court at Pune in Complaint (ULP) No.52 of 1988 alleging that he was illegally terminated from service and he also claimed reinstatement with backwages. It

appears that the Respondent No.1 is a Central government Undertaking and in exercise of powers conferred by Section 23(I) of the National Cooperative Development Corporation Act, 1962 it has framed its Service Rules. The petitioner was appointed as a Chowkidar by order dated 31-3-1980 on probation for a period of two years in the pay scale of Rs.196-232. He resumed his duties on 10-4-1980 and the termination letter dated 16-8-1982 brought his services to an end. The said letter was received by him on 23-8-1982 and he claimed to have worked till then. The Labour Court dismissed the complaint vide its judgment and award dated 19-7-1988 and the petitioner's challenge to the same in Revision Application (ULP) No.53 of 1988 also failed in terms of the judgment and order passed by the Industrial Court, Pune on 4-10-1989.

3. The appointment letter dated 31-3-1980 issued to the petitioner by the Respondent NO.1 (Rashtriya Sahakari Vikas Nigam) had set out the terms and conditions and clauses 2(i) to (iii) read thus:

> "(i) You will be on probation for a period of two years. However, the appointment will be liable to termination on one month's notice on either side without reasons being assigned.

> The Corporation, however, reserves the right of terminating your services forthwith or before expiration of the stipulated period of notice by making payment to you of a sum equivalent to the pay and allowances for the period of notice or the un-expired portion thereof.
>
> (ii) The appointment carried with it the liability to serve in any part of India.
>
> (iii) Other conditions of service will be government by the relevant rules and orders in force from time to time."

Regulation 4 of the Service Rules framed by Respondent No.1 deals with classification of employees in four different Groups i.e. Group "A" to Group "D". There could be no dispute that the petitioner fell in Group "D". Item 9 of the Service Rules has following clauses:

> (1) Every employee selected by direct recruitment shall be appointed on probation for a period of two years. Provided that the appointing authority may in exceptional circumstances of any case reduce the period of probation for reasons to be recorded in writing.
>
> (2) The appointing authority may if it thinks fit in the case of any employee extend the period of probation, such extended period being not more than two years.
>
> (3) A probationer shall be liable to be dismissed from service, if (a) he fails to perform satisfactorily the duty assigned to him during the period of probation or undergo to the satisfaction of the appointing authority any training that may be prescribed

during the period of probation or (b) the appointing authority is satisfied that the probationer was ineligible for appointment to the post or cadre in the corporation to which he is appointed.

(4) Such discharge of a probationer shall not amount to removal or dismissal from service."

The termination order dated 16-8-1988 reads as under:

"OFFICER ORDER

The General Manager, NCDC, hereby with effect from the afternoon of 16th August 1982 terminates the services of Shri. Srikant Baburao Awthade, Chowkidar, Regional Office, Pune.

2. Shri S.B.Awthade, will be entitled for one month's salary in lieu of one month's notice period."

4. Admittedly there was no confirmation letter issued by the Competent Authority at the end of two years of the initial probationary period. In his evidence before the Labour Court (Exh.46) Mr.N.Chandrashekharan, the witness of the respondent admitted that the petitioner had put in two years and four months service. In its Written Statement at Exhibit 37 the Corporation had pointed out that the petitioner's service was not confirmed, he was in the habit of consuming alcohol and attending his duties in that condition and for this he was issued memos

from time to time asking him to improve his conduct. He ignored the directions and the advice and also started remaining absent from duties. He was not found suitable to be continued as Chowkidar and, therefore, he was removed from service as per the Service Regulations and more particularly while he was still on probation. The Labour Court relied upon the decision in the case of Dhanjibhai Ramjibhai v. State of Gujarat reported in **AIR 1985 SC 603** to the effect that the probationer ipso facto does not get any right of confirmation merely because he completes the probation period and continues in the employment. On the other hand it is the right of the employer to assess the employee's performance while on probation, decide his suitability and take a decision whether to regularise him or discontinue him. The Labour Court, therefore, recorded a finding that the order of termination could not be said to be an act in colourable exercise of the employer's right. In the termination order one month's wages in lieu of notice was also offered to the petitioner and the Labour Court noted that the termination of a probationer would not amount to retrenchment within the meaning of Industrial Disputes Act, 1947 and, therefore, there was no necessity to comply with the

requirements of Section 25-F of the said Act. Obviously the termination was on account of the petitioner being unsuitable to be continued. The Revisional Court examined the respective pleas at length and agreed with the findings recorded by the Labour Court. It appears that the petitioner had relied upon another decision of the Supreme Court in the case of Mohan Lal v. Bharat Electronics Ltd. (**1981 II LLJ 70**) in support of his contention that the termination of his service amounted to retrenchment. The Industrial Court noted that in Mohan Lal's case (Supra) the appointment was not on probation. The Industrial Court also noted that in the complaint filed before the Labour Court it was not pleaded by the petitioner that there was infraction of Section 25-F of the I.D. Act and, therefore, the termination was bad in law. Such an issue was taken up only during the course of arguments before the Labour Court.

5. The concurrent views taken by both the Courts below do not call for any interference while exercising powers of superintendence under Article 227 of the Constitution and more so when the findings recorded by the Labour Court do not suffer from any

errors apparent on the face of record.

6. The petition, therefore, fails and the same is hereby dismissed. Rule is discharged.

(B.H.MARLAPALLE,J.)